

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 4431-4432 OF 2013

(Against the Order dated 04/10/2013 in Appeal No. 751/2012 & 287/2012 of the State Commission Andhra Pradesh)

1. DR. MADAN MOHAN & 2 ORS.

S/O SEWA RAM, CHAIRMAN,FBSAIOS, MIM EYE
TECH INSTITUTE, 29-30 LINK ROAD, LAJPAT
NAGAR-III,

NEW DELHI - 110024

2. DR.C.SRIRAMA MURTHY, S/O ABBAIAH,
SECRETARY, FBSAIOS, VIJAYA EYE HOSPITAL,
LAZMIPURAM MAIN ROAD,
GUNTUR -522007

A.P

3. DR. V. SAMBASIVARAO, S/O GOPALA RAO,
TREASURER ,FBSAIOS,
ARAVIND LASIK LASER EYE HOSPITAL,, SURYA
RAOPET,
VIJAYAWADA

A.P

.....Petitioner(s)

Versus

1. VAVILAPALLI RATNAMALA & 2 ORS.

W/O LATE BHUJANGARAO, R/O NEAR
DEEPAMAHAL, G.T ROAD, SRIKAKULAM
SRIKAKULAM

A.P

2. VAVILAPAALI SRINUBABU, S/O LATE
BHUJANGARAO,
R/O NEAR DEEPAMAHAL, G.T ROAD,
SRIKAKULAM
SRIKAKULAM

A.P

3. VAVILAPALLI SURESHKUMAR, W/O LATE
BHUJANGARAO,
R/O NEAR DEEPAMAHAL, G.T ROAD,
SRIKAKULAM
SRIKAKULAM

A.P

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT
HON'BLE DR. S.M. KANTIKAR, MEMBER**

For the Petitioner : Ms. Shubhi Sharma, Advocate for
Mr. Ashwarya Sinha, Advocate

For the Respondent : Mr. Y. Rajagopala Rao, Advocate

Dated : 02 May 2022

ORDER

PER DR. S. M. KANTIKAR, MEMBER

1. A Family Benefit Scheme (hereinafter referred to as the 'FBS') was started for the doctor members of All India Ophthalmology Society (hereinafter referred to as the 'AIOS'). The case of the Complainant was that her husband Dr. Bhujang Rao (since deceased) was granted provisional membership of the FBS-AIOS scheme, subject to the ratification of general body of AIOS.

Dr. Bhujang Rao initially paid Rs. 30,000/- and then on 09.01.2007 also paid Rs. 4,900/- towards admission and life membership fee. His membership was ratified on 02.02.2007 thereafter as per the terms and conditions of scheme, he would complete one year of membership by 01.02.2008.

However, unfortunately Dr. Bhujang Rao expired within a year i.e. on 21.12.2007. The Complainants informed the Secretary AIOS about the death and claimed the benefits under the FBS-AIOS scheme. However, the claim was repudiated on 26.02.2009 on the ground that Dr. Bhujang Rao did not complete one year of continuous membership and, therefore, the amount of Rs. 30,000/- deposited by the deceased would be sent back to the Complainants. Being aggrieved by the deficiency of the Opposite Parties, the Complainants filed a Consumer Complaint before the District Forum, Srikakulam and prayed Rs. 15 lakh as covered FBS-AIOS with 18% interest.

2. The Opposite Parties filed their reply and denied the allegations. It was submitted that AIOS and FBS-AIOS are two different entities having separate headquarters. As per the terms and conditions of scheme the claim was repudiated.

3. The District Forum allowed the Complaint and directed the Opposite Parties to pay Rs. 15 lakh jointly and severally to the Complainants (Rs. 5 lakh to each complainant) along with Rs. 2000/- as legal expenses and Rs. 1000/- towards fee of advocate.

4. Being aggrieved, parties on both the sides filed the First Appeals before the State Commission.

5. The State Commission modified the Order of the District Forum and allowed the Complaint in part, and directed the Opposite Parties to pay Rs. 2,92,500/- to each of the Complainant with interest @ 9% p.a. from the date of filing of the claim.

6. Being aggrieved, the Opposite Parties filed the instant Revision Petition.

7. We have heard the learned Counsel on both the sides and perused the relevant material on record.

8. The dispute relates to the eligibility for the membership of FBS-AIOS and whether the deceased Dr. Bhujang Rao was eligible as member of FBS-AIOS.

9. The Opposite Parties conducted an enquiry and disclosed that Dr. V. Bhujanga Rao as a mandatory requirement was not a life member of AIOS at the time of his application for the membership to FBS-AIOS. In spite of repeated requests he failed to submit AIOS Life Membership Certificate. On 09.01.2007, after a lapse of about 9 months, Dr. Bhujanga Rao applied for life membership of AIOS and also paid an amount of Rs. 4,900/- vide Demand Draft bearing no. 864368 dated 29.11.2006, towards admission fee and life membership fee. The membership application form was filled by Dr. Bhujang Rao, who gave self-declaration. He concealed material fact that he was free from major ailments and for the last two years he has not suffered from any cancer or underwent any major operation. But in the claim form, cause of

death of Dr. Bhujang Rao was clearly mentioned as Renal Cell Carcinoma and septicemia. Thus, he was suffering from malignancy of kidney and applied the membership to avail the benefits from FBS-AIOS.

10. It is pertinent to note from the Memorandum of Association of FBS-AIOS, Dr. Bhujang Rao did not fulfill the primary eligibility criteria of one year membership of FBS-AIOS. As per Clause-3 of the memorandum, only the life members of AIOS are eligible to join the FBS-AIOS Society and the deceased was never ratified as a life member of FBS-AIOS.

11. We note that as per Clauses of Memorandum, the deceased – Dr. Bhujang Rao paid a membership fee of Rs. 30,000/- on 28.02.2006, however, on that date, he was not a member of AIOS. Thereafter 9 months later, on 29.11.2006, he paid AIOS membership fee of Rs. 4,900/- and he was granted provisional membership on 25.01.2007 which was ratified by general body of AIOS on 02.02.2007.

12. It is relevant to note the Memorandum of Association, which under heading ‘eligibility of claim’ reads as below:

“The nominee/nominees of a member of the scheme will become eligible to get the benefit of the scheme in case of death of an active member only after ONE YEAR from the date of member joining the scheme. The date of receipt of the DD and application form by the FBS-AIOS office will be taken as the date of joining the scheme.”

13. At this stage, it is relevant to go through the observations of the State Commission, it is reproduced as:

“16) In the written arguments it is submitted by the Complainant that Dr. V. Bhujanga Rao was informed by FBS that unless he becomes a life member in AIOS, he would not be eligible for FBS Scheme and admittedly notice was also issued asking Dr. V. Bhujanga Rao to become a life member of AIOS. Admittedly, thereafter the DD was sent on 29.11.2006 for which a receipt was issued on 9.1.2007 and a provisional membership was allotted which was again ratified on 2.2.2007. From the aforementioned rules, it is clear that only members of AIOS are eligible for joining FBS-AIOS and since there is no evidence on record that Dr. V. Bhujanga Rao had got his membership ratified as per the rules and regulations, he is not entitled to the amount of Rs. 15 lakhs. The complainant also failed to establish that the death was within one year of taking of the membership, whereas the record shows that his membership was ratified on 2.2.2007 and the said Dr. V. Bhujanga Rao died on 21.12.2007 before completion of one year of time.

17) To reiterate, a person who is qualified to join as a member of FBS-AIOS should be ratified member according to the opposite parties. A life member should complete one year of FBS-AIOS membership for getting the eligibility to claim fraternity benefit under FBS scheme. It is an admitted fact that Dr. V. Bhujanga Rao has applied for membership on 10.4.2006 along with DD bearing No. 044782 dt. 28.2.2006 for Rs. 30,000/-. At the time of his application Dr. V. Bhujanga Rao was not a member of AIOS. He has applied for AIOS membership on 9.1.2007 along with DD bearing No. 8874 for Rs. 4,900/- drawn in favour of AIOS. Accordingly, AIOS granted the provisional membership No. V11014 on 25.1.2007 subject to ratification by AIOS. Admittedly on 2.2.2007 his membership was ratified and he died on 21.12.2007. As one year was not completed, admittedly the opposite parties issued advance stamped receipt of Rs. 2,92,500/- for each of the complainant.”

14. In the instant case admittedly before completing one year from 02.02.2007, Dr. V. Bhujang Rao, died on 21.12.2007, therefore, in our view he was not eligible for applying membership of FBS-AIOS. Accordingly, his nominees were not eligible to receive claim under the FBS-AIOS. Thus, the general body was justified to return Rs. 30,000/- which was deposited by the deceased at the time of filling the membership form.

15. To conclude, the late Dr. Bhujanga Rao applied for life membership on 09.01.2007 and paid Rs. 4,900/- towards admission fee and life membership fee of AIOS. On 25.01.2007 the AIOS granted a provisional membership and on 2.2.2007 the General Body of AIOS ratified his membership. Thus he would complete his 1 year membership by 01.02.2008, but unfortunately he passed away on 21.12.2007 i.e. within one year. Thus, he was not eligible to claim the benefits under the FBS-AIOS scheme of the Petitioners also in our view issuance of advance stamped receipt of Rs. 2,92,500/- for each complainant has no binding effect on the petitioners to pay the amount. Moreover, there was material concealment of the Renal Carcinoma in the membership form filled by the deceased, which is not acceptable under law.

16. Based on the foregoing discussion and considering the facts and peculiar circumstances of the instant case, we partly allowed both the Revision Petitions with the following directions:

(a) The Petitioner (AIOS) shall not recover the amount Rs.2,92,500/- if already paid to the each Complainant.

If not, then

(b) In the ends of justice, the Petitioner is directed to refund Rs.34,900/- (30000+4900) along with 9% interest per annum to the wife of deceased i.e. Complainant no 1 from 28.02.2006 till its realization.

The Revision Petitions are partly allowed on the said directions.

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R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER